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Letter dated 28 October 2004 from the Permanent Representative of the Netherlands to the United Nations addressed to the Chairman of the Committee

Please find attached the report of the Kingdom of the Netherlands, as requested in Security Council resolution 1540 (see annex).

(*Signed*) Dirk Jan **van den Berg**
Ambassador
Permanent Representative

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Annex to the letter dated 28 October 2004 from the Permanent Representative of the Netherlands to the United Nations addressed to the Chairman of the Committee

National report of the Kingdom of the Netherlands on the implementation of Security Council resolution 1540 (2004)

A. Introduction

1. The unanimous adoption of United Nations Security Council resolution 1540 (2004) on 28 April 2004 (UNSCR 1540) was an historic event. This was the first Security Council resolution to address the threat that proliferation of weapons of mass destruction and their means of delivery, in particular by non-state actors, poses to international peace and security.

2. The Kingdom of the Netherlands has taken a range of legislative and executive measures that ensure compliance with UNSCR 1540. We continuously review our policies, with a view to establishing what further measures may be necessary.

3. The Netherlands is also fully committed to the work of the 1540 in ensuring global implementation of this resolution, including – where appropriate – provision of assistance or advice.

European Union

4. As the Netherlands is a member of the EU, reference is made to the EU Common Report that will be transmitted to the UNSCR 1540 Special Committee separately. This EU report covers areas of EU and Community competencies and activities in relation to UNSCR 1540 and should be read in conjunction with this national report.

Multilateral Treaties

5. Several multilateral treaties seek to achieve objectives that are similar to UNSCR 1540. The Kingdom of the Netherlands is a party to several such international instruments, including:

- 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, Outer Space and under Water (NTBT);
- 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT);
- 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC);
- 1980 Convention on the Physical Protection of Nuclear Material (CPPNM);
- 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC);
- 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT).

In accordance with Article II of the NPT, the Netherlands has concluded a safeguards agreement with the International Atomic Energy Agency (IAEA), as well as an Additional Protocol. The Netherlands has also subscribed to the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC).

B. Implementation of UNSCR 1540 in the Kingdom of the Netherlands

1. Operative paragraph 1

Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

The Kingdom of the Netherlands does not provide any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. To this end, legislation has been enacted and is detailed below.

2. Operative paragraph 2

Decides [...] that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical, or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

2.1 The objective and purpose of UNSCR 1540 converge with those of the NPT, BWC and CWC. The legislation enacted in the Netherlands to implement these Conventions secures compliance by the Netherlands with UNSCR 1540.

2.2 The Biological Weapons Convention (Implementation) Act (*Uitvoeringswet verdrag biologische wapens*) prohibits the manufacture, acquisition, possession, development and transfer of biological weapons (Sections 3-4). The use of biological weapons is prohibited by the provisions of the Criminal Code relating to the creation of hazards (*Wetboek van strafrecht*, Sections 172, 173, 173a, 173b, 287 and 289). The prohibition to posses biological weapons means that the transport of biological weapons is prohibited as well.

2.3 The Chemical Weapons Convention (Implementation) Act (*Uitvoeringswet verdrag chemische wapens*) prohibits the manufacture, acquisition, possession, development, transfer and use of chemical weapons (Section 2). The prohibition to posses chemical weapons means that the transport of chemical weapons is prohibited as well.

2.4 In respect of nuclear weapons, the Nuclear Energy Act (*Kernenergiewet*) prohibits the manufacture, possession, development, transport and transfer of nuclear material without a licence (Sections 15, 29). Non-state actors will not be eligible for a licence if issuance thereof would result in a violation of the NPT by the Netherlands. The Nuclear Energy Act also explicitly characterises the manufacture, acquisition, possession, development, transport, transfer and use of nuclear material for terrorist purposes as a criminal offence under the Nuclear Energy Act (Section 79). The exposure of human beings, animals, plants and goods to ionising radiation and their contamination with nuclear material is prohibited under the Criminal Code (Section 161).

2.5 With respect to the means of delivery, the Biological Weapons Convention (Implementation) Act (*Uitvoeringswet verdrag biologische wapens*) prohibits the manufacture, acquisition, possession, development and transfer of the means of delivery of biological weapons (Section 4). The Weapons and Ammunition Act (*Wet Wapens en munitie)* prohibits the manufacture, possession and transfer of hazardous substances. This includes

biological and chemical agents and nuclear material (Section 2, category II sub b in combination with sections 9, 14, 26, 27).

2.6 The involvement of non-state actors in activities mentioned in operative paragraph 2 for terrorist purposes is an aggravating circumstance under the Terrorist Crimes Act (*Wet terroristische misdrijven*). The imposition of higher penalties is envisaged if a terrorist purpose is established in case of a violation of the above-mentioned provisions of the Implementing Act of the Biological Weapons Convention and the Implementing Act of the Chemical Weapons Convention (see Section 83 of the Criminal Code in combination with Section 6.4 of the Economic Offences Act) (*Wet op de economische delicten*) or the Nuclear Energy Act (see Section 83 of the Criminal Code in combination with 79 and 80.2 of the Nuclear Energy Act).

2.7 Attempts by non-state actors to engage in any of the activities mentioned in operative paragraph 2 prohibited under the above-mentioned provisions of the Biological Weapons Convention (Implementation) Act, the Chemical Weapons Convention (Implementation) Act or the Nuclear Energy Act, to participate in them as an accomplice, or to assist or to finance them qualify as criminal offences. The relevant provisions can be found in the Criminal Code with respect to attempt (Section 45), participation, subornation and material support (Section 47), complicity (Section 48), participation in a criminal organisation (Sections 140 and 140a) and in the Nuclear Energy Act with respect to conspiracy (Section 80.3).

3. Operative paragraph 3(a)

Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage and transport;

3.1 The Biological Weapons Convention (Implementation) Act provides the framework for the prohibition of the development, production, stockpiling, acquisition and retention of biological agents not justified for peaceful purposes within the meaning of the BWC (Section 2).

3.2 The Chemical Weapons Convention (Implementation) Act provides for an accounting and reporting system in accordance with the CWC (Sections 4-8 in conjunction with the Chemical Weapons Convention (Implementation) Decree (*Uitvoeringsbesluit verdrag chemische wapens*)).

The Strategic Goods (Import and Export) Decree (*In- en uitvoerbesluit strategische goederen)* prohibits the transfer of chemicals on List II of the CWC to States that are not Parties to the CWC; the transfer of chemicals on List III of the CWC to States that are not Parties to the CWC is subject to final destination verification (end-user control).

3.3 The Nuclear Energy Act (*Kernenergiewet*) provides for an accounting and registration system of nuclear material (Sections 13, 14 and 28 in conjunction with the Fissionable Materials and Ores (Registration) Decree (*Besluit registratie splijtstoffen en ertsen*).

4. *Operative paragraph 3(b)*

b) Develop and maintain appropriate effective physical protection measures;

4.1 Domestic law requires the physical protection of dangerous goods, including biological agents, chemical agents and nuclear material, during transport and requires transport companies to develop and maintain a security plan. With respect to nuclear material, the Fissionable Materials, Ores and Radioactive Substances (Transport) Decree (*Besluit vervoer splijtstoffen, ertsen en radioactieve stoffen*) secures implementation of the provisions of the CPPNM (Section 4a). Pursuant to this provision, a nuclear security management program must be implemented for every nuclear transport.

4.2 The Nuclear Installations, Fissionable Materials and Ores Decree (*Besluit kerninstallaties, splijtstoffen en ertsen*) provides a framework for requiring physical protection measures in respect of nuclear installations (Section 36.2 in combination with Nuclear Installations Security Guidelines 1993 (*Beveiligingsrichtlijn kerninstallaties 1993*)). These require that every nuclear facility implement a nuclear security management program and submit an annual internal security audit report on what has been done.

5. *Operative paragraph 3(c)*

c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

5.1 Community customs legislation and provisions adopted at the national level endows customs authorities with powers to undertake actions in general with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed. Customs authorities perform specific acts, such as examining goods, verifying the existence and authenticity of documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts with a view to ensuring rules and provisions mentioned. The Netherlands has concluded several mutual administrative assistance agreements with her main trading partners. With the aid of these agreements international cooperation with regard to detect and prevent the illicit trafficking.

5.2 In June 2003, the Minister of Finance of the Netherlands decided to install up-to-date technical equipment in the Port of Rotterdam which makes it possible to monitor large numbers of containers for radioactive material. The monitors are used to oversee the flow of incoming and outgoing containers, irrespective of the country of origin or destination.

This decision substantially improves the possibility of detecting and interdicting illicit trafficking in radioactive material. A public tender to purchase and install the necessary technical facilities has been issued. In order to make a quick start possible, in August 2003 the Netherlands and the United States of America signed a mutual Declaration of Principles concerning the installation of special equipment on an interim basis at the Port of Rotterdam to facilitate a quick start. The initial equipment became operational in March 2004. About 90% of all containers passing through the Port of Rotterdam will ultimately be monitored. Dutch customs in the Port of Rotterdam also has two advanced X-ray container scanners.

5.3 To enhance the possibilities to detect, deter and prevent the illicit trafficking and to align all powers to be executed by customs authorities in the case of goods entering the territory of on the Netherlands new customs

legislation will be developed. This will be done in accordance with the 1982 United Nations Convention on the Law of the Sea. The Netherlands is in the process of establishing a contiguous zone for the purpose of, *inter alia*, carrying out checks at an earlier stage in the logistic chain.

6. Operative paragraph 3(d)

d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and transshipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations;

The Strategic Goods (Import and Export) Decree introduced a system of import, export and transit controls. These include checks on end-users, military materials, including military technology, and dual-use items. EC Dual-Use Export Control Regulation No. 1334/2000 applies to dual-use items whereas national legislation (i.e. the Strategic Goods ((Import and Export)) Decree) provides for additional measures regarding the imposition of penalties for infringements, and gives national authorities powers to carry out controls and to investigate and prosecute criminal offences. Furthermore, the Foreign Financial Relations Act 1994 (*Wet financiële betrekkingen buitenland 1994*) requires a license for financial transactions involving the transit and brokering of war materials.

7. Operative paragraph 4

Decides to establish, in accordance with rule 28 of its provisional rules of procedure, for a period of no longer than two years, a Committee of the Security Council, consisting of all members of the Council, which will, calling as appropriate on other expertise, report to the Security Council for its examination, on the implementation of this resolution, and to this end calls upon all States to present a first report no later than six months from the adoption of this resolution to the Committee on steps they have taken or intend to take to implement the resolution.

The Netherlands in its capacity of President of the European Union has promoted the timely submission of national reports of EU-Member States, and has coordinated the joint report on EU and Community competencies and activities in relation to1540.

8. Operative paragraph 5

Decides that none of the obligations set forth in this resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the Organization for the Prohibition of Chemical Weapons.

The Netherlands is a State Party to the Nuclear Non-Proliferation Treaty (NPT), the Chemical Weapons Convention (CWC), and the Biological and Toxin Weapons Convention (BWC). The Netherlands is also an active member of the IAEA and OPCW, and is active in the continuing work by States Parties to strengthen implementation of the BWC.

9. Operative paragraph 6

Recognizes the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists.

9.1 The Netherlands participates in the following multilateral export control regimes, and implements its national export controls in accordance with the guidelines and control lists of the following regimes:

- the Zangger Committee;
- the Nuclear Suppliers Group;
- the Australia Group;
- the Wassenaar Arrangement;
- the Missile Technology Control Regime.

9.2 The Netherlands is a strong supporter of effective multilateral export control regimes and is working to raise international standards.

9.3 The Netherlands is continuing to ensure that the multilateral export control regimes respond to developments in a timely fashion.

10. Operative paragraph 7

Recognizes that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions.

10.1 The Netherlands recognises that some States may require assistance in implementing the provisions of this resolution.

10.2 In response to specific requests, the Netherlands is prepared to provide assistance as appropriate to States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the provisions of UNSCR 1540 (2004) on non-proliferation.

Requests for assistance should be directed to the head of the Division of Nuclear Affairs and Non-proliferation of the Security Policy Department of the Netherlands Ministry of Foreign Affairs.

11. Operative paragraph 8a

Calls upon all States:

a) To promote the universal adoption and full implementation, and, where necessary, strengthening of multilateral treaties to which they are parties, whose aim is to prevent the proliferation of nuclear, biological or chemical weapons;

11.1 The Netherlands is actively lobbying for the universalisation of multilateral treaties whose aim is to prevent the proliferation of weapons of mass destruction to which it is a party (see A.5), both through bilateral contacts and in cooperation with the European Union. In this context, the Netherlands has provided funds for and participated in seminars, in the Caribbean and Mediterranean region, to encourage States to become party to the CWC.

11.2 As a member of the European Union, the Netherlands has:

- contributed to the EU Common Position of November 2003 on the universalisation of the main multilateral non-proliferation agreements (CWC, BTWC, NPT);
- participated in EU lobbying for the universalisation of the IAEA Comprehensive Safeguards Agreements (CSA) and its Additional Protocol. The Additional Protocol contains conditions of supply: supported the incorporation of a non-proliferation clause in EU-third country mixed agreements (both political and economic between the EU and third countries). This clause, *inter alia*, codifies commitment to comply with existing obligations as well as to take steps to become party to and comply with other international commitments concerning weapons of mass destruction. In this respect, the Netherlands is working to make the IAEA Additional Protocol a condition of nuclear supply. The Netherlands considers the CSA and the Additional Protocol to be the verification standard;

and in its capacity of President of the European Union, the Netherlands has:

- made EU-demarches for the universalisation of the Hague Code of Conduct against Ballistic Missile Proliferation (HCOC) and in support of a HCOC resolution to be adopted by the UNGA;
- made a EU-demarche for the universalisation and early entry into force of the CTBT.

11.3 The Netherlands will continue to promote universal adoption and full implementation and, where necessary, to strengthen multilateral treaties designed to prevent the proliferation of nuclear, biological or chemical weapons.

12. Operative paragraph 8b

b) To adopt national rules and regulations, where it has not yet been done, to ensure compliance with their commitments under the key multilateral non-proliferation treaties:

The Netherlands has ensured compliance with its commitments under the non-proliferation treaties to which it is party (see Section A.5) through the adoption of implementing legislation referred to in Section B.2.

13. Operative paragraph 8c

c) To renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention, as important means of pursuing and achieving their common objectives in the area of non-proliferation and of promoting international cooperation for peaceful purposes;

13.1 International Atomic Energy Agency (IAEA)

The Netherlands and the IAEA have concluded the Comprehensive Safeguards Agreement and its Additional Protocol (See Section A.5). The Netherlands is a regular, voluntary donor to specific activities undertaken by the IAEA to prevent the proliferation of nuclear materials to illicit users. In total, the Netherlands has contributed 550.000 Euro to IAEA.

13.2 Organisation for the Prohibition of Chemical Weapons (OPCW)

- As the host country of the OPCW, the Netherlands does everything possible to create an environment in which the organisation and its staff can operate effectively;
- To support the OPCW's important work and, more specifically, the ongoing negotiations on outstanding issues, the Netherlands provides facilitators for several informal open-ended consultations;
- The Netherlands continues to provide support for OPCW activities, i.e. in relation to inspectors' training, national implementation of the CWC and the promotion of the safe, peaceful use of chemistry in States in transition to modern industry;

- In 2004, the Netherlands hosted an OPCW course on Analytical Skills Development for experts from States in transition to modern industry. In 2004, the Netherlands contributed 1.2 million Euro to the OPCW.
- The Netherlands is prepared to make a substantial voluntary contribution to support the implementation of the OPCW Action Plan on National Implementation.

13.3 Biological and Toxin Weapons Convention (BWC)

The Netherlands has sent teams of experts to the BWC meetings in 2003 and 2004 and actively participated in the discussions on the agreed work programme. In doing so, it contributed to the promotion of common understanding and effective action. These discussions will be followed up at the 2006 Review Conference. At present, the Netherlands is funding a study on possible ways to strengthen the BWC in 2006.

The Netherlands will send a team of experts to the BWC Meetings in 2005 to contribute to the discussion on the possible content, promulgation, adoption and enforcement of codes of conduct for scientists.

13.4 The Hague Code of Conduct against Ballistic Missile Proliferation (HCOC)

The Netherlands is one of the original parties to the first normative instrument in the field of ballistic missile non-proliferation. The Hague Code of Conduct against Ballistic Missile proliferation (HCOC) was inaugurated at the international launching conference in The Hague on 25 November 2002.

The Netherlands held the first Chairmanship of the Code in 2002-2003. Both during those years and afterwards, it has made many outreach efforts to increase the number of Subscribing States to the Code, which currently stands at 117.

The Netherlands submits annual declarations on its ballistic missile non-proliferation policies, in accordance with the provisions of the Code.

The Netherlands will continue to support the HCOC and further developments and implementation of the various confidence-building measures set out in the Code.

13.5 Proliferation Security Initiative (PSI)

The Netherlands has been a full, active participant in the PSI ever since its establishment in May 2003.

In cooperation with several PSI partners, the Netherlands has made world-wide demarches to promote the PSI.

The Netherlands attends nearly all PSI interdiction exercises and meetings. At present, the Netherlands is preparing a Dutch PSI interdiction exercise.

14. Operative paragraph 8d

d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws.

The Dutch non-proliferation policy includes an awareness programme that aims at preventing Dutch companies, universities or research institutions from becoming knowingly or unknowingly involved in proliferation of weapons of mass destruction.

The Dutch government also supports and educates relevant industries on how to comply with their export control obligations and CWC obligations as efficiently and effectively as possible. To this end, the Dutch government disseminates information through government websites, publications and leaflets.

Furthermore, the Netherlands is active in the EU WMD Strategy, also at the national level.

The Netherlands intends to further develop its contacts with industry.

15. Operative paragraph 9

Calls upon all States to promote dialogue and cooperation on non-proliferation so as to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery.

The Netherlands is a strong supporter of mainstreaming non-proliferation. The Netherlands is working on this in its relations with third countries, as well as between the EU and its international partners.

The Netherlands continues to promote dialogue and cooperation on non-proliferation to address the threat posed by proliferation of nuclear, chemical, or biological weapons, and their means of delivery.

16. Operative paragraph 10

Further to that threat, calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials.

The Netherlands is a full and active participant in the PSI and in the Container Security Initiative (CSI).

(See also Section B.5)